IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

CRL.A.No. 1295 of 2004(A)

CC.15/2001 of ENQUIRY COMMISSIONER & SPLECIAL JUDGE, THRISSUR

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APPELLANT: ACCUSED:

DR.N.ANANTHA NARAYANAN,
FORMER ANAESTHESIOLOGIST, TALUK HEAD QUARTERS HOSPITAL, MUVATTUPUZHA, RESIDING AT NANDA BHAVAN, KAITHAMUKUKARA, THIRUVANANTHAPURAM.

BY ADVS. SRI.G.JANARDHANA KURUP (SR.)
SRI.P.K.VARGHESE
SRI.K.S.ARUN KUMAR

RESPONDENT: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON 2.3.2007 DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.ANO. 8948 OF 2004 IN CRL.APPEAL NO.1295 OF 2004.

DISMISSED

2.3.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 1295 OF 2004

Dated this the 2nd day of March, 2007

JUDGMENT

This appeal is filed against the judgment in C.C.No.15 of 2001 on the file of the Enquiry Commissioner and Special Judge, Thrissur. The appellant faced trial for the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act").

2. The prosecution case against the appellant was that while the appellant was working as Anaesthesiologist at Taluk Headquarters Hospital, Muvattupuzha, he demanded a sum of Rs.300/- from PW.2 for giving anaesthesia to his sister, one Nabeeza (CW.5) who was admitted in the said hospital for undergoing Thyroidectomy surgery. The further case of the prosecution was that the demand was made at about 7 p.m. on 19.3.1999 at his residence in the Housing Board Colony, Muvattupuzha and that PW.2, who was not willing to give bribe, approached PW.12, the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau,

Ernakulam and gave Ext.P2 first information statement. It is the further case of the prosecution that on the basis of Ext.P2, PW.12 laid a trap against the appellant and when the appellant came to his official consultation room at the hospital at 11 a.m. on 24.3.1999, PW.2 went inside the room along with his brother and PW.3, the official witness and in furtherance of the demand made by the appellant PW.2 gave him three currency notes of hundred rupee denomination which were smeared with phenolphthalein powder at the office of PW.12. The said currency notes were recovered from the appellant and the appellant was arrested at 12.10 p.m. on 24.3.1999 from his official consultation room. To prove the case against the appellant, the prosecution examined PWs.1 to 12 and produced Exts.P1 to P17 as well as MOs.1 to 9. No oral or documentary evidence was adduced on the side of the defence. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C.. He denied the allegations levelled against him and stated that the case was foisted against him on the advise of the Vigilance Officer, one George and some persons of the D.Y.F.I who had demanded Rs.1000/- from him towards certain fund and he had given only Rs.300/-. The appellant further stated that the surgery of the sister of PW.2 was provisionally posted to 24.3.1999 on the advise of Dr.Nathaniel Thomas and that on examination, the pulse rate of the patient was found to be very high and

since it was risky to administer anaesthesia at that stage, he had prescribed tablets to reduce the pulse rate. He further stated that on 24.3.1999 while he was in the consultation room at the hospital and examining patients, three persons entered the room and enquired about the surgery of the sister of PW.2 and immediately PW.12 entered the room and asked him to remove his brief case from the table and that when he did so, he found some currency notes kept under the brief case. The appellant further stated that the said currency notes when subjected to phenolphthalein test gave positive result. However, relying on the evidence adduced by the prosecution, the trial court found the appellant guilty of the offence punishable under Section 7 of the P.C. Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for a further period of two months. The appellant was found not guilty of the offence punishable under Section 13 (1)(d) read with Section 13(2) of the P.C. Act. The appellant was also given the benefit of Section 428 Cr.P.C. The above conviction and sentence are challenged in this appeal.

3. This Court heard Sri. G.Janardana Kurup, learned senior counsel appearing for the appellant as well as the learned Public Prosecutor.

Learned senior counsel appearing for the appellant raised three contentions before this Court: (i) the trial court went wrong in accepting Ext.P2 first information statement as PW.2 who was alleged to have given the bribe had not supported the prosecution case, (ii) the trial court ought not to have acted upon the evidence given by PWs.3 and 12 with regard to recovery of the amount from the appellant as their evidence is not corroborated by any other piece of evidence and (iii) even if the recovery of the tainted currency notes is accepted, mere recovery of the said currency notes is not sufficient to prove that the appellant committed the offence punishable under Section 7 of the P.C. Act as the prosecution failed to prove demand or acceptance of the amount by the appellant.

4. The prosecution examined PW.1 who was the Additional Secretary of the Health Department to prove Ext.P1 sanction order to prosecute the appellant under the P.C. Act. This witness had given evidence to the effect that Ext.P1 sanction order was issued after considering the facts and circumstances of the case and the materials collected by the Vigilance Department and after satisfying that the charges levelled against the appellant requires to be tried under the provisions of the P.C. Act. Though Ext.P1 sanction order was challenged by the defence, the trial court correctly accepted Ext.P1 as having been properly

issued as per the provisions of the P.C. Act.

5. PW.2, the brother of CW.5 Nabeeza who was admitted in Taluk Headquarters Hospital, Muvattupuzha for Thyroidectomy surgery, was examined to prove that the appellant demanded and accepted bribe. He deposed before the court below that the operation of his sister was fixed provisionally on 24.3.1999 and that she was advised to seek the opinion of the Anaesthesiologist. This witness further stated that the appellant demanded a bribe of Rs.300/- on 19.3.1999 and since he was not willing to pay the amount, he preferred a complaint against the appellant before PW.12. He admitted his signature in Ext.P2 first information statement. He also stated that he produced three currency notes of hundred rupee denomination before PW.12 who after smearing the said currency notes with phenolphthalein powder returned the same to him as per Ext.P4 entrustment mahazar for giving to the appellant. PW.2 further stated that he placed the tainted currency notes under the brief case which was seen on the table of the appellant. This witness did not support the prosecution case that the appellant accepted the currency notes with his left hand. The trial court analysed the evidence of this witness and found that though PW.2 did not support the prosecution case with regard to acceptance of the amount by the appellant, Ext.P2 first information

statement given by him before PW.12 can be taken as true as PWs.3 and 12 had given evidence before the court below that PW.2 had given Ext.P2 first information statement before PW.12.

6. PW.3 who was a trap witness deposed that on the basis of the instruction received by him from A.D.M., Ernakulam, he went to the office of PW.12 along with the Additional Tahsildar on 24.3.1999. He further stated that PW.2 who was present in the office produced three currency notes of hundred rupee denomination before PW.12 who smeared the said currency notes with phenolphthalein powder and the currency notes were then put into the pocket of PW.2 on preparing Ext.P4 mahazar with instruction to give the same to the appellant on demand. This witness further stated that he accompanied PW.2 and his brother Moidheen to the hospital and on entering the consultation room of the appellant and after getting a signal from the said Moidheen, PW.2 gave the tainted currency notes to the appellant who accepted the currency noes with his left hand and after counting the currency notes, the appellant placed the same under the brief case kept on the table. PW.3 further stated that as soon as PW.2 gave the signal, PW.12 and other members of the trap team entered the consultation room of the appellant and found the currency notes kept under the brief case and that the currency notes when subjected to

phenolphthalein test were found to be the same currency notes which were entrusted with PW.2 as per Ext.P4 entrustment mahazar as the test gave positive result.

7. PWs.4 to 9 were examined to prove the admission of Nabeeza, sister of PW.2 at Taluk Headquarters Hospital, Muvattupuzha. PW.10 was the Village Officer who prepared Ext.P12 scene plan.

8. PW.11 was the General Surgeon of Taluk Headquarters Hospital, Muvattupuzha. He stated before the court below that he had issued Ext.P13 prescription in the name of the patient, Nabeeza, and had advised her to undergo a surgery and also anaesthesia check up. In cross-examination, he deposed that the patient was posted for surgery subject to the approval of the Anaesthesiologist. The evidence of this witness is relevant only to show that Nabeeza was provisionally posted for surgery on 24.3.1999 prior to which date the appellant had examined her.

9. PW.12 was the Deputy Superintendent of Police, Vigilance and Anti-corruption Bureau, Ernakulam. He deposed that he had recorded Ext.P2 complaint preferred by PW.2 and lodged Ext.P2(a) First Information Report. This witness spoke about preparation of Ext.P4

mahazar after demonstration of the phenolphthalein test in the presence of PWs.2 and 3, about laying the trap against the appellant and the recovery of the tainted currency notes placed under the brief case on the table in the official consultation room of the appellant on preparing Ext.P5 recovery mahazar. The evidence of this witness corroborates with the version given by PW.3 who had accompanied PW.2 on the date of the incident.

10. The learned senior counsel appearing for the appellant submitted that since PW.2 who is alleged to have given the bribe to the appellant had himself turned hostile to the prosecution, Ext.P2 first information statement given by PW.2 cannot be taken as a substantive piece of evidence against the appellant without any other evidence to corroborate the fact that the appellant had demanded and accepted bribe from PW.2. Learned senior counsel submitted that the case set up by the appellant when he was questioned under Section 313 Cr.P.C. was not considered by the trial court properly.

11. Admittedly, Nabeeza, the sister of PW.2 was admitted in the hospital for Thyroidectomy surgery and the surgery was provisionally fixed on 24.3.1999. This is evident from the evidence of PW.11. Further, it has come out in evidence that the appellant had examined

Nabeeza and had prescribed tablets for bringing down her pulse rate. In the above circumstances, it has to be inferred that there existed a circumstance for the appellant to do some favour in the exercise of his official functions for which he wanted a reward. This fact was spoken to by both PWs.2 and 3. That apart, while the complaint was filed before the Deputy Superintendent of Police, PW.2 had specifically stated that he and his brother Moidheen had met the appellant on 19.3.1999 and that on that day, the appellant had demanded the bribe. Relying on the above evidence, the trial court correctly accepted Ext.P2 and found that the appellant accepted the bribe money as per the demand made by him on 19.3.1999.

12. The next contention of the learned senior counsel appearing for the appellant is that the evidence of PW.3, the trap witness, cannot be accepted without any other evidence to corroborate the same, as PW.2 himself turned hostile to the prosecution and he had stated he had placed the currency notes under the brief case kept on the table. In this context, learned senior counsel placed reliance on the decisions of the Apex Court reported in **Major E.G. Barsay v. State of Bombay, A.I.R. 1961 S.C. 1762 I** and **Ram Prakash Arora v. State of Punjab (1972) 3 S.C.C. 652**. It is seen that even though PW.2 turned hostile to the prosecution, he

had admitted having filed Ext.P2 complaint before PW.12 and having produced three currency notes of hundred rupee denomination as instructed by PW.12. PW.2 was declared hostile by the prosecution at the stage at which he deviated from the case with regard to payment of bribe to the appellant. According to PW.2 he had placed the tainted currency notes under the brief case kept on the table. In this aspect, the evidence of PW.3 is that the appellant accepted the amount from PW2 with his left hand and placed the currency notes under the brief case. The facts considered by the Apex Court in the above two decisions relied on by the learned senior counsel are entirely different from the facts of the case in hand. In this context, learned senior counsel also relied on the decision of the Apex Court reported in **Darshan Lal v. Delhi Administration (1974) 3 S.C.C. 595.** In the above judgment, the Apex Court had taken the view that to accept the evidence of a trap witness, there should be independent and reliable corroborative evidence. The facts considered by the Apex Court were relating to charges under Section 5(2) of the P.C. Act and Section 161 I.P.C. and there was no evidence that the accused had accepted bribe or that the bribe money was recovered from the body of the person. In the case in hand, even though PW.2 had stated that he had placed the currency notes on the table and not paid the same directly to the appellant, PW.3, the trap witness who had accompanied PW.2 had given

evidence to the effect that PW.2 gave the currency notes to the appellant on demand and the appellant had accepted the same with his left hand and then placed the currency notes under the brief case kept on the table. The evidence of PW.3 is supported by the recovery made by PW.12 who had given evidence to the effect that MO.1 series of currency notes recovered as per Ext.P5 mahazar were the same currency notes which were brought to his office by PW.2 and which he had entrusted with PW.2 as per Ext.P4 mahazar. Hence, the contention of the learned senior counsel that there was no independent evidence to corroborate the evidence of PW.2 cannot be accepted.

13. A reading of the evidence of PW.12 coupled with the recovery of the currency notes as per Ext.P5 mahazar would clearly prove that the appellant had demanded and accepted bribe . It has also come out in evidence that the currency notes recovered by PW.12 as per Ext.P5 mahazar were the same currency notes entrusted with PW.2 as per Ext.P4 mahazar. The fact that the brother of PW.2 who had accompanied him on 19.3.1999 and on the day of the incident is now working in Saudi Arabia and that CW.5 left the hospital after recovery of the currency notes from the possession of the appellant cannot be taken as a ground to discard the prosecution case. In other words, the prosecution has succeeded in

proving the case against the appellant as alleged and the trial court was fully justified in finding that the appellant had committed the offence punishable under Section 7 of the P.C. Act .

The Crl. Appeal is accordingly dismissed, confirming the judgment of the trial court.

(K.THANKAPPAN, JUDGE)

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